would be applicable if the jury should believe certain statements of the witnesses produced by the defence. In complying with this request, he very properly called the attention of the jury to the different version of the same matter given by the other side. To this extent only can it be said that his remarks affected the defendant unfavorably.

Looking at the whole case, I am of opinion that the charge was not only right in every material point, but was not calculated to and did not in any sense mislead the jury.

Order denying a new trial, and judgment affirmed.

Tyler and *Brown*, for plaintiff.

Townsend, *Dyett*, and *Raymond*, for defendant.

In the Supreme Judicial Court of Maine, January, 1861.

ARNO WISWELL ET ALS., RECEIVERS OF HANCOCK BANK, *vs.* JOHN N. STARR ET ALS.

1. Each stockholder in a bank in this State is liable to make good all losses sustained by the pecuniary inability of the directors, by whose mismanagement the bank has sustained a loss, to an amount *not exceeding the amount of his stock at the time.*
2. Each stockholder is also liable, at the expiration of the charter, for the redemption of *all unpaid bills*, in proportion to the stock he then holds. The sum to be contributed by each will be in proportion to the whole number of shares actually held at the expiration of the charter, whether such holders are within or without the jurisdiction of the Court.
3. If the whole number of shares necessary to make up the capital stock named in the charter does not appear on the books, or otherwise to be held by any persons, the liability will be apportioned according to the number of shares actually held, and not upon the whole capital named in the charter.
4. When one of the receivers named in the bills is also a stockholder, the bill cannot be sustained, as the same person cannot be both a complainant and respondent, but the bill may be amended, on motion.
5. The charter of a bank expires, within the meaning of the statute, when an injunction is made perpetual.

The opinion of the Court was delivered by

CUTTING, J.—The bill in substance alleges that the Hancock Bank was incorporated March 21, 1853, with a capital of $50,000, in shares of $100 each, and subsequently went into operation; that

on September 19, 1857, the bank commissioners represented to a justice of this Court, "that upon examining said bank they were of opinion that its condition was such as to render its further progress hazardous to the public," &c., and prayed "for an injunction to restrain said incorporation from further proceeding with its business," &c.

Whereupon, on September 21, a temporary injunction was granted, which, on September 30, on a hearing, was modified, and on November 20, of the same year, was made perpetual, and the complainants were duly appointed receivers, qualified, and proceeded in the regular discharge of their duties.

And it is further alleged, that all the property of the bank, when reduced to cash, was $8,605 64, and that the claims against the bank, presented and allowed, amounted to the sum of $16,107 70; that John N. Starr was an original and present holder of ten shares, together with twenty-one others, owning in like manner one hundred and sixty-seven shares; that twenty-seven other individuals, not originally, were stockholders on Sept. 30, 1857, owning one hundred and ninety-nine shares; that since that time seven others have transferred their stock, being fifty-seven shares; and to four persons nineteen shares have been transferred, five of which were to Samuel Waterhouse, one of the receivers; that the receivers, in their own names, but in behalf of the claimants, file this bill in equity against the persons named and liable as stockholders, praying that they shall be made to contribute to the payment of the debts of the corporation.

To this bill John N. Starr alone appears by his counsel, and files a general demurrer. We say that he alone appears, because the term, "and others," is too indefinite to create a responsibility, thus presenting various questions under the banking law for the first time to be adjudicated.

The statute in force at the time the Hancock Bank was chartered was that of 1841, (Act of Amendment, chap. 1, sec. 8,) and we cite only those sections having application to the questions raised. Sec. 1. "Every bank which now is or shall hereafter be incorporated under the authority of this State, except savings banks, shall be

governed by the following rules, and subject to all the duties, limitations, liabilities, and provisions contained in this chapter."

Sec. 45. "The holders of stock in any bank at the time when its charter may expire shall be liable, in their individual capacities, for the redemption and payment of all bills which may have been issued by said bank, and which shall remain unpaid, in proportion to the stock they may respectively hold at the dissolution of the charter," &c.

Sec. 46, among other things, provides, that "any holder of any bill or bills issued by any bank, which bill or bills, after the expiration of its charter, shall remain unredeemed, and which may have been duly demanded of such bank, may pursue his remedy by a bill of equity, to be prosecuted in the Supreme Judicial Court."

Next in order is the statute of 1855, ch. 164, which purposes not to change, alter, or increase the liabilities of stockholders, but in some respects to change the remedy by transferring certain powers to the receivers, for sec. 9 contains this language: "Nor shall anything in this act be construed to increase the amount for which the stockholders of any bank may be liable under existing laws." Still, notwithstanding, the liabilities of stockholders were so guarded, sections 4, 5, and 6, of the same chapter, instead of "all bills which may have been issued by said bank," refer to claims and claimants, terms sufficiently comprehensive to embrace all the indebtness of the bank.

After a perpetual injunction, and the appointment of receivers, sec. 6 provides, that "if it be made to appear to the Court that the assets aforesaid are insufficient to pay the said claims against the bank, said receivers shall forthwith file their bill in equity in their own names, but in behalf of the claimants, against the persons who are or were stockholders of such bank, and by law may be liable to contribute to the payment of its debts."

The statute of 1857, which is a revision of all prior statutes upon the subject of banking then in force, provides remedies for the creditors by a bill in equity against the stockholders upon the event of certain contingencies, viz:

First. In case of the pecuniary inability of the directors, by

whose management the bank has sustained a loss, each stockholder shall be liable therefor to an amount not exceeding the amount of his stock at that time.—*Sec.* 43.

Second. The holders of stock in any bank, at the expiration of its charter, shall be liable, in their individual capacities, for the redemption and payments of all bills issued by said bank and remaining unpaid, in proportion to the stock they then hold.—*Sec.* 46.

Third. The receivers, after their appointment, instead of the claimants, are to file their bill in equity in their own names, but in behalf of the claimants, against the persons liable as stockholders to contribute to the payment of the debts.—*Secs.* 73, 75.

The charter of the Hancock Bank expired by operation of law on Nov. 20, 1857, when the injunction was made perpetual and the receivers were appointed: *Crease* vs. *Babcock,* 23 Pick. 334. At that time, as the general law was that under which they accepted the charter, each stockholder became liable in their individual capacity for the redemption and payment of *all bills* issued by the bank, and remaining unpaid, in proportion to the stock they *then* held, which proportion is not limited to the amount of their stock, as in the case of loss by the mismanagement of the directors; but they are not responsible for all the debts or claims of the creditors, and the claims denominated debts, sec. 73, and described in the bill, must be construed to mean only the unpaid bills. Any other construction would increase the liability of stockholders by legislation subsequent to chartered rights, and would be directly opposed to the express declaration of the Legislature in their public act of 1855, before cited.

All the stockholders should be embraced in the bill, but only such can be made to contribute as are within the jurisdiction of this Court, by residing or having attachable property within the State. And, although the bill is against all jointly, yet each may answer severally and independently, and the sum to be contributed by each will be in proportion to the whole number of shares held at the expiration of the charter, whether such holders were within or without the jurisdiction.

It appears that the capital stock was $50,000, and should have been represented by the holders of 500 shares; whereas it is alleged that on September 30, 1857, a short time before the final injunction, only 376 shares were so represented.

It is true that the statute of 1841 required that one-half, at least, of the capital stock should be paid in in gold and silver money before a bank could go into operation, which fact was to be ascertained and certified to the office of the Secretary of State by the bank commissioners, aided by the oath of a majority of the bank directors; and, in like manner, the other half within twelve months from the date of the charter. But the bill avers that the charter was accepted; the corporation organized and went into operation. It is to be presumed that the State commissioners discharged their official duties, that the directors' oaths were not false, that the semi-annual returns were made correctly and in good faith, and that the corporation from its organization, during a period of some years, under State supervision, was conducted according to law; but when or in what manner the deficient shares were lost or merged it no where appears. Whatever may be the legal relations between the corporation and its members, it would be inequitable in those who have put the machine in motion to escape responsibility to the public under a plea of fraud and deception.

The bill bears date Sept. 29, 1859, and not being for a discovery, or praying for an injunction, need not be verified by oath. The transferring of shares, subsequent to the dissolution of the corporation by the perpetual injunction, can have no effect to relieve to prior holders of such shares from their responsibility, nor even during the pendency of the temporary suspension, unless transacted in good faith and not with a design to escape existing liability: *Marcy* vs. *Clark*, 17 Mass. 330.

It is inferable, from an allegation in the bill, that Samuel Waterhouse, Esq., at the time he was appointed a receiver, was a stockholder in the bank, and has been declared against as such. He cannot be both a complainant and respondent; the latter he must be, as has been shown; the former he would not have been, had such fact come to the knowledge of the judge before his appointment.

Under existing circumstances, the rules of equity may, on motion, permit his name to be stricken out of the bill, and the majority of the receivers to proceed. See R. S., ch. 1, sec. 4, clause 3. But, at present, for that cause the bill is defective and the demurrer sustained.

Hathaway and *Rowe*, for complainants.

Peters, for respondents.

NOTICES OF NEW BOOKS.

A TREATISE ON THE CRIMINAL LAW OF THE UNITED STATES, comprising a General View of the Criminal Jurisprudence of the Common and Civil Law, and a Digest of the Penal Statutes of the General Government, and of Massachusetts, New York, Pennsylvania, Virginia, and Ohio; with the Decisions on Cases arising upon those Statutes. By FRANCIS WHARTON, author of "Precedents of Indictments and Pleas," "Medical Jurisprudence," "American Law of Homicide," etc. Fifth and revised edition. In two volumes. Philadelphia: KAY & BROTHER, 19 South Sixth street, Law Booksellers, Publishers, and Importers. 1861.

We are called again to notice a new and much-expanded edition of the principal and certainly the best American text-book on criminal law. Everywhere throughout our extended country the criminal law is a continual and most important part of the administration of justice. In all communities the penal code demands and receives a prominent place. And few books have met or deserved more favor from the bar than Mr. Wharton's accurate and copious treatise. Wherever criminal jurisprudence is to be administered, (and where is it not a necessity of social life?) these volumes must find readers.

The learning contained in this work can be gathered only from an immense number of text-books, and from cases scattered throughout the Federal reports, and the numerous and increasing volumes of the State reports, and from the English reports and Crown cases. Few libraries contain them all, few digests contain even a reference whereby they may be found, and fewer professional men could devote the time, the learning, and the toil requisite to gather them together, in order to apply them to the cases as they start forth in daily life. "It is to meet this want," says the learned author, in his preface to the first edition in 1846, "that the following work is designed. To give in every instance a complete and